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Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FIRDOS S. SHEIKH, M.D.,

Plaintiff,

V.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Case No. 2:22-cv-00409-WBS-AC

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS**

Hearing on Motion

Date: October 24, 2022

Time: 1:30 p.m.

Location: Courtroom 5, Fourteenth Floor
United States Courthouse
501 I Street
Sacramento, CA 95814

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Location: Courtroom 3, Fourteenth Floor
United States Courthouse
501 I Street
Sacramento, CA 95814

NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE that on October 24, 2022, at 1:30 p.m., or as soon thereafter as this matter may be heard, Defendants U.S. Department of Homeland Security (“DHS”), Carol Webster, and Eugene Kizenko will, and hereby do, move pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) for an order dismissing the Complaint filed by Plaintiff Firdos Sheikh (ECF 1) for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted.

This Motion will be made in Courtroom 5 of the United States Courthouse located at 501 I Street in Sacramento, California. Dismissal is warranted because:

- there is no waiver of sovereign immunity authorizing suit against DHS under *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971);
- Plaintiff's claims extend *Bivens* to a “new context,” and there are numerous “rational reasons” to believe Congress is better suited to authorize a new damages remedy, *see Egbert v. Boule*, 142 S. Ct. 1793, 1805 (2022);
- even if this Court created a new *Bivens* remedy, Plaintiff's allegations fail to present cognizable constitutional violations; and
- even if this Court created a new *Bivens* remedy, and even if Plaintiff presented cognizable constitutional claims, the individual agents are entitled to qualified immunity.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, and such other evidence or argument as the Court may consider.

Dated: August 1, 2022

Respectfully submitted,

PHILLIP A. TALBERT
United States Attorney

By: /s/ Joseph B. Frueh
JOSEPH B. FRUEH
Assistant United States Attorney

Attorneys for Defendants